QUESTION PRESENTED

Whether an entity that does not qualify as an "arm of the State" for Eleventh Amendment purposes can nonetheless assert sovereign immunity as a defense to an admiralty suit.

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New Orleans S.S. Ass'n v. *Plaquemines Port, Harbor & Terminal Dist.*, 28 F.M.C. 556 (1986), aff'd, *Plaquemines Port, Harbor & Terminal Dist.* v. *FMC*, 838 F.2d 536 (D.C. Cir. 1988) 27

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Cases—Continued: Page

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West Gulf Mar. Ass'n v. *Port of Houston Auth.*, 22 F.M.C. 420 (1980) 27

Cases—Continued: Page

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46 C. F.R. 501 *et seq.* 2

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American Ass'n of Port Authorities, *Seaport Governance in the United States and Canada* <http://www.aapa-ports.org/pdf/governance_uscan. PDF> 26

1 Erastus Benedict, *The Law of American Admiralty* (6th ed. 1940) 17, 18

David P. Currie, *Federalism and the Admiralty: "The Devil's Own Mess"*, 1960 Sup. Ct. Rev. 158 8

Felix Frankfurter & James M. Landis, *The Business of the Supreme Court* (1927) 8, 24

1 Steven F. Friedell, *Benedict on Admiralty* (7th ed. (revised) 1988) 18

Grant Gilmore & Charles Black, *The Law of Admiralty* (2d ed. 1975) 18

William N. Still, Jr., *Iron Afloat: The Story of the Confederate Armorclads* (1985) 3

Joseph Story, *Commentaries on the Constitution* (abridge ed. 1833) (1987 reprint) 8

United States Navy Dep't, *Annual Report of the Navy Department: Report of the Secretary of the Navy* (report from J.A. Dahlgren to Hon. G. Welles, Jan 4, 1865) 3

In the Supreme Court of the United States

No. 04-1618

NORTHERN INSURANCE COMPANY OF NEW YORK,
PETITIONER

v.

CHATHAM COUNTY, GEORGIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

The court of appeals held that a political subdivision that does not qualify as an "arm of the State" for purposes of the Eleventh Amendment nonetheless is entitled to sovereign immunity from an *in personam* suit in admiralty. Pet. App. 3a. Applying that rule, the court concluded that respondent was immune from this action for damages allegedly caused by the county's negligent operation of a drawbridge across the intercoastal waterway. The United States has a significant interest in the immunity question presented by this case.

The United States Coast Guard, through the Office of Bridge Administration, exercises jurisdiction over all bridges spanning the navigable waters of the United

States, including the drawbridge involved in this case. See 33 U.S.C. 401, 491, 499; 33 C.F.R. Pts. 114-117; 33 C.F.R. 117.353(b) (Causton Bluff Bridge). Among other things, the Coast Guard regulates the location and clearance, construction activity, navigation lighting and signals, and operation of bridges. See 34 C.F.R. Pts. 114-117. The Coast Guard's interest in maritime safety is enhanced by the application of basic maritime tort standards to bridges and other facilities built, maintained, and operated by political subdivisions.

The Federal Maritime Commission (FMC) administers the Shipping Act of 1984, 46 U.S.C. App. 1701 *et seq.*, which governs common carriage by water to and from the United States. See 46 C.F.R. 501 *et seq.* The FMC enforces the Shipping Act through prosecutions initiated by it, see 46 U.S.C. App. 1710(a), and through privately-filed complaints adjudicated by FMC, see 46 U.S.C. App. 1710(c). See generally *FMC* v. *South Carolina State Ports Auth.*, 535 U.S. 743, 756-759 (2002). The FMC frequently adjudicates privately-filed complaints against political subdivisions engaged in activities regulated under the Shipping Act, see note 14, *infra*, and therefore has a substantial interest in the amenability of such entities to suit.

The United States also has a general interest in promoting the uniformity of federal maritime law and the flow of commerce on the Nation's navigable waters.

STATEMENT

1. Petitioner is the insurer of a Catalina yacht—*Love of My Life*—owned by James K. Ludwig. On October 6, 2002, Ludwig was sailing *Love of My Life* along the Wilmington River (formerly St. Augustine Creek), a part of the intercoastal waterway, about five

miles south of Savannah, Georgia, near Causton's Bluff.[1] He came upon the Causton Bluff Bridge, a drawbridge owned, operated, and maintained by respondent Chatham County, Georgia. The bridge connects Savannah with Whitemarsh, Wilmington, and Tybee Islands, and was built in 1963 to enable cars to reach the islands. Respondent's employees—"bridge tenders"—operate the bridge mechanism so that the span may be raised to permit passage of light pleasure craft, tug and tow vessels, and other commercial vessels. Pet. App. 7a-8a.

When *Love of My Life* approached the bridge, the bridge tender opened it, but soon realized that the bridge was malfunctioning and that one span was drifting down. Although the tender tried to notify Ludwig of the problem, Ludwig's radio was turned off. The tender was able to stop the downward drift of the span and begin to raise it, but *Love of My Life* nonetheless hit the span and then deviated to the side and struck the bridge itself. As a result of the allision, *Love of My Life* suffered $78,980.50 in damages and Ludwig incurred additional expenses, with the total damages adding up to $137,987.69. Pet. App. 8a-9a.

2. Petitioner commenced this *in personam* admiralty action in United States District Court for the Southern District of Georgia, asserting claims of negli-

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[1] During the Civil War, Causton's Bluff served as a strategic outpost for Savannah and the site of one of the largest earthen work forts occupied by the confederate army. When General Sherman moved on the city in 1864 as part of his march to the sea, the confederate army sent the warship *Isondiga* to guard a former bridge near Causton's Bluff and other key sites. See William N. Still Jr., *Iron Afloat: The Story of the Confederate Armorclads* 215 (1985); see also *Annual Reports of the Navy Department: Report of the Secretary of the Navy* (Report from J.A. Dahlgren to Hon. G. Welles, Jan. 4, 1865).

gence, maintenance of a continuing nuisance, and violation of the navigable servitude encompassed in various U.S. Coast Guard and U.S. Army Corps of Engineers permits. Pet. App. 7a-9a.[2] The district court granted summary judgment for respondent, holding that respondent was entitled to sovereign immunity from suit, and dismissed petitioner's action. *Id.* at 12a-16a.

The district court stated that "[t]he pertinent issue before the Court * * * is whether [respondent] is entitled to the same immunity as the state." Pet. App. 13a. Relying on the decision of the Fifth Circuit in *Broward County* v. *Wickman*, 195 F.2d 614 (1952), the court determined that that issue turned on whether respondent "was acting as part of the State" —*i.e.*, "whether [respondent] was exercising power delegated from the State," or instead "performing a proprietary function." Pet. App. 15a. The court concluded that "counties exercise state power to acquire land and build and operate bridges," *ibid.*, and that respondent "exercis[ed] these state powers" with respect to the bridge at issue. *Id.* at 16a. Accordingly, the court held "that the County is protected by sovereign immunity." *Ibid.*

3. The Eleventh Circuit affirmed. Pet. App. 1a-6a. The court noted that respondent "is not asserting an Eleventh Amendment immunity defense." *Id.* at 3a n.1. It reasoned, however, that "common law has carved out a 'residual immunity,' which would protect a political subdivision such as [respondent] from suit." *Id.* at 3a.

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[2] In an *in personam* admiralty action, "the defendant is a person, not a ship or some other instrument of navigation." *Madruga* v. *Superior Court*, 346 U.S. 556, 560-561 (1954). By contrast, in an *in rem* action, "a vessel or thing is itself treated as the offender and made the defendant by name or description." *Id.* at 560. The question presented in this case is limited to *in personam* admiralty actions.

In reaching that conclusion, the court of appeals relied on the Fifth Circuit's decision in *Wickman*, which held that a county was entitled to immunity from suit for the alleged negligent operation of a bridge. *Id.* at 4a.

The court of appeals also referred to this Court's decisions in *Workman* v. *New York City*, 179 U.S. 552 (1900), and *Ex parte New York*, 256 U.S. 490 (1921). In *Workman*, this Court held that New York City could be held liable in an *in personam* admiralty suit arising from a collision between one of its fireboats and a private vessel, whereas in *Ex parte New York* the Court held that New York State was entitled to sovereign immunity from a similar suit. The court of appeals reasoned that this case was "parallel" to *Ex parte New York*, not to *Workman*, because respondent—though not a State—exercised powers delegated from the State in operating the bridge. Pet. App. 4a-5a. Accordingly, the court held that respondent was entitled to "invoke residual sovereign immunity" to defeat this action. *Id.* at 5a.

SUMMARY OF ARGUMENT

A political subdivision that does not enjoy Eleventh Amendment immunity under the arm-of-the-state doctrine is not entitled to assert sovereign immunity from an *in personam* admiralty action.

A. The Eleventh Amendment and the basic constitutional principles it embodies guarantee an immunity from suit for States and entities that are considered "arms of the State." In *Ex parte New York*, 256 U.S. 490, 500 (1921), this Court held that state sovereign immunity extends to *in personam* admiralty suits. In a long line of cases before and after that time, however, the Court has established in non-admiralty cases that this "principle of sovereign immunity * * * does not ex-

tend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State." *Alden* v. *Maine*, 527 U.S. 706, 756 (1999). Accordingly, it is settled that political subdivisions of States and other entities that are not arms of the State are not entitled to sovereign immunity under the Constitution.

B. In *Workman* v. *New York City*, 179 U.S. 552 (1900), this Court refused to adopt a different regime for admiralty. The Court held that the immunity of political subdivisions is governed by uniform federal admiralty law, not by the widely varying laws and rules of the States or their political subdivisions. In addition, the Court held that there is no basis in admiralty law for recognizing immunity of political subdivisions of States from *in personam* suits in admiralty. Nothing in *Ex parte New York* undermines either of those holdings. *Ex parte New York* expressly cited *Workman*, and it distinguished *Workman* on precisely the ground that *Workman* dealt with lesser political entities that, unlike States, are not entitled to immunity and that therefore are within the reach of the admiralty courts.

C. The *Workman* rule has stood the test of time and dovetails with settled immunity principles recognized outside of admiralty. In addition, the rule is supported by important objectives of admiralty law—*i.e.*, compensating the victims of wrong and establishing uniform rules governing ships as they pass from port to port. The court of appeals' rule that political subdivisions enjoy immunity whenever they exercise powers delegated from the State would foster uncertainty, and thus litigation, about the threshold jurisdictional determination when such entities are subject to suit. Moreover, in a broad sense, all powers exercised by such subdivisions

are drawn from the State, and it would therefore be exceptionally difficult to apply the court of appeals' immunity test in any principled fashion.

D. A rule that political subdivisions are immune from *in personam* admiralty actions would disrupt significant federal interests. First, immunizing such activities from basic admiralty tort principles would undermine an important incentive to operate bridges and other maritime facilities safely, and it would therefore disserve the significant federal interest in maritime safety. Second, the court of appeals' immunity rule could frustrate the objectives of the Shipping Act by inviting challenges to the jurisdiction of the FMC to adjudicate private complaints filed against local government entities under the Shipping Act. Cf. *FMC* v. *South Carolina State Ports Auth.*, 535 U.S. 743 (2002). Third, holding that political subdivisions are immune from *in personam* admiralty suits could impede maritime commerce by threatening the confidence that vessel owners have in the safety of bridges and other maritime facilities as their vessels move from one port to the next along the Nation's vital network of navigable waters.

ARGUMENT

A POLITICAL SUBDIVISION THAT IS NOT AN "ARM OF THE STATE" UNDER THE ELEVENTH AMENDMENT MAY NOT INVOKE SOVEREIGN IMMUNITY AS A DEFENSE TO AN *IN PERSONAM* SUIT IN ADMIRALTY

The Constitution "extend[s]" the judicial power of the United States "to all Cases * * * of admiralty and maritime Jurisdiction," U.S. Const. Art. III, § 2, Cl. 1. The "fundamental purpose" underlying that jurisdictional grant is "[t]o preserve adequate harmony and appropriate uniform rules relating to maritime matters

and bring them within control of the Federal Government." *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 160 (1920); see Joseph Story, *Commentaries on the Constitution* § 870, at 618-619 (abridged ed. 1833) (1987 reprint). The establishment of a uniform body of federal law governing maritime matters was of particular concern to the framers, because "[m]aritime commerce was . . . the jugular vein of the Thirteen States." *California* v. *Deep Sea Research, Inc.*, 523 U.S. 491, 501 (1998) (quoting Frankfurter & Landis, *The Business of the Supreme Court* 7 (1927)); see also David P. Currie, *Federalism and the Admiralty: "The Devil's Own Mess,"* 1960 Sup. Ct. Rev. 158, 163.[3] The decision below extending sovereign immunity to a political subdivision that is not an "arm of the State" for purposes of the Eleventh Amendment is wrong and threatens the long-standing federal interest in uniformity by placing such entities beyond the reach of admiralty courts.

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[3] Federal jurisdiction over admiralty actions is not exclusive. Since the first Judiciary Act in 1789, state courts have had concurrent jurisdiction over *in personam* admiralty actions under the "saving to suitors" clause now embodied in 28 U.S.C. 1333(1). See *American Dredging Co.* v. *Miller*, 510 U.S. 443, 446 (1994). In entertaining such actions, however, state courts are generally obliged to give effect to the substantive rules of federal maritime law. *Id.* at 447. A state court may not adopt a remedy that "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law." *Ibid.* (quoting *Southern Pac. Co.* v. *Jensen*, 244 U.S. 205, 216 (1917)).

A. Only A State Or An "Arm Of The State" May Assert Sovereign Immunity Under The Constitution

1. The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." In *Hans* v. *Louisiana*, 134 U.S. 1 (1890), the Court held that the constitutional principles reflected in the Eleventh Amendment extend to suits against a State by its own citizens, even though such suits do not fall within the Amendment's plain terms. In later cases, the Court has held that those same basic principles preclude suits against States in a number of other contexts not explicitly addressed by the text of the Eleventh Amendment. See, *e.g.*, *FMC* v. *South Carolina State Ports Auth.*, *supra* (administrative adjudications before FMC); *Alden* v. *Maine*, 527 U.S. 706 (1999) (private suits in state courts pursuant to federal causes of action); *Blatchford* v. *Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775 (1991) (suits by Indian tribes); *Principality of Monaco* v. *Mississippi*, 292 U.S. 313 (1934) (suits by foreign nations); *Smith* v. *Reeves*, 178 U.S. 436 (1900) (suits by federal corporations).

2. It is established that state sovereign immunity provides the States with "a defense to suits in admiralty, though the text of the Eleventh Amendment addresses only suits 'in law or equity.'" *Alden*, 527 U.S. at 728 (citing *Ex parte New York*, 256 U.S. 490, 497 (1921)). In *Ex parte New York*, certain barge owners sued tugboat owners in admiralty for damages to barges in tow. The district court ordered the state superintendent of public works to appear in his official capacity and answer the

claims, because the tugs were under charter to the State when they suffered the damages. *Id.* at 496, 501. The case tested the ability of the State itself to assert sovereign immunity in admiralty court; no political subdivision was involved in the case. Citing *Hans* and other cases, this Court noted that "the entire judicial power granted by the Constitution does not embrace authority to entertain a suit brought by private parties against a State without consent given." *Id.* at 497. The Court added: "[n]or is the admiralty and maritime jurisdiction exempt from the operation of this rule." *Ibid.* See *id.* at 503 (The States, which are "exempt from litigation at the suit of individuals in *all other judicial tribunals*," are entitled to "a like exemption in the courts of admiralty and maritime jurisdiction.") (emphasis added). In short, the Court held that "the immunity of a State from suit *in personam* in the admiralty brought by a private person without its consent, is clear." *Id.* at 500.[4]

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[4] *Ex parte New York* has frequently been cited for the proposition that the principles of Eleventh Amendment sovereign immunity apply to *in personam* admiralty cases. See, *e.g.*, *FMC*, 535 U.S. at 754; *Deep Sea Research*, 523 U.S. at 503; *Puerto Rico Aqueduct & Sewer Auth.* v. *Metcalf & Eddy, Inc.*, 506 U.S. 139, 145 n.4 (1993); *Welch* v. *Texas Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 473, 488-489 (1987) (plurality opinion); *Scheuer* v. *Rhodes*, 416 U.S. 232, 237 (1974); *Land* v. *Dollar*, 330 U.S. 731, 738 (1947). By contrast, the "Court has not always charted a clear path in explaining the interaction between the Eleventh Amendment and the federal courts' *in rem* admiralty jurisdiction." *Deep Sea Research*, 523 U.S. at 502. In the *in rem* context, the Court has held that the Eleventh Amendment does *not* bar admiralty jurisdiction in a case against a State where the State is not in possession of the vessel or property at issue, but has indicated that the Eleventh Amendment *does* bar the exercise of such jurisdiction when the vessel or property at issue is in the hands of the State. *Id.* at 507;

3. An "important limit to the principle of sovereign immunity is that it bars suits against States but not lesser entities," and that such immunity therefore "does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State." *Alden* v. *Maine*, 527 U.S. at 756; see *Board of Trs. of Univ. of Ala.* v. *Garrett*, 531 U.S. 356, 369 (2001) ("[T]he Eleventh Amendment does not extend its immunity to units of local government"). The "ultimate control of every state-created entity resides with the State, for the State may destroy or reshape any unit it creates." *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 47 (1994). But this Court has recognized at least since *Lincoln County* v. *Luning*, 133 U.S. 529, 530 (1890)—which was decided the same day as *Hans* v. *Louisiana*—that "cities and counties do not enjoy Eleventh Amendment immunity." *Hess*, 513 U.S. at 47.[5] Because "[t]he bar of the Eleventh Amendment to suit in federal court * * * does not extend to coun-

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see *The Davis*, 77 U.S. (10 Wall.) 15 (1869). Because this case is an *in personam* admiralty action, the scope of sovereign immunity with respect to *in rem* admiralty actions is not at issue.

[5] This understanding is deeply rooted in our history. Municipalities typically were subject to suit in tort from the founding. *Owen* v. *City of Independence*, 445 U.S. 622, 638-650 (1980). By 1871, "[a]s a general rule, it was understood that a municipality's tort liability in damages was identical to that of private corporations and individuals." *Id.* at 640; see *Cook County* v. *United States ex rel. Chandler*, 538 U.S. 119, 126-127 (2003); *Monell* v. *Department of Soc. Servs. of the City of New York*, 436 U.S. 658, 687-688 (1978); see also *Detroit* v. *Osborne*, 135 U.S. 492, 498 (1890); *Barnes* v. *District of Columbia*, 91 U.S. 540 (1875); *Evanston* v. *Gunn*, 99 U.S. 660 (1878); *Nebraska City* v. *Campbell*, 67 U.S. (2 Black) 590, 590 (1863); *City of Chicago* v. *Robbins*, 67 U.S. (2 Black) 418, 428 (1863); *Weightman* v. *Corporation of Wash.*, 66 U.S. (1 Black) 39, 50 (1862).

ties and similar municipal corporations," subordinate political entities that are not sufficiently identified with the State itself to be considered arms of the State are "not entitled to assert any Eleventh Amendment immunity from suit in the federal courts." *Mt. Healthy City Sch. Dist. Bd. of Educ.* v. *Doyle*, 429 U.S. 274, 280-281 (1977).[6]

The fact—deemed dispositive by the court of appeals in this case—that an entity, though not an arm of the State, may be exercising powers delegated by the State is of no consequence in applying the rule that political subdivisions are not entitled under the Constitution to state sovereign immunity. Thus, "the Court has consistently refused to construe the [Eleventh] Amendment to afford protection to political subdivisions such as counties and municipalities, even though such entities exercise a slice of state power." *Lake Country Estates, Inc.* v. *Tahoe Reg'l Planning Agency*, 440 U.S. 391, 401 (1979) (internal quotation marks omitted).

Indeed, even in the context of determining whether an entity is an arm of the State (which is *not* an issue

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[6] That bedrock rule finds expression throughout this Court's case law. See also, *e.g.*, *Jinks* v. *Richland County*, 538 U.S. 456, 465-466 (2003) ("Although we have held that Congress lacks authority under Article I to override a *State's* immunity from suit in its own courts, it may subject a *municipality* to suit in state court if that is done pursuant to a valid exercise of its enumerated powers.") (citation omitted); *Buckhannon Bd. & Care Home, Inc.* v. *West Va. Dep't of Health & Human Res.*, 532 U.S. 598, 609 n.10 (2001) ("Only States and state officers acting in their official capacity are immune from suits for damages in federal court. Plaintiffs may bring suit for damages against all others, including municipalities and other political subdivisions of a State.") (citation omitted); cf. *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389, 412 (1978) (state action antitrust exemption does not extend to political subdivisions).

here), the Court has not focused on the extent to which it exercises delegated state powers. For example, in *Auer* v. *Robbins*, 519 U.S. 452, 456 n.1 (1997), the Court rejected the claim that the St. Louis, Missouri, Board of Police Commissioners was an arm of the State. In reaching that conclusion, the Court did not inquire into whether or to what extent the Board exercised powers delegated by the State. Instead, the Court noted that, although the state governor appointed four of the five board members, the city was "responsible for the board's financial liabilities" and "the board is not subject to the State's direction or control in any other respect." *Ibid.* (citation omitted). See *Regents of the Univ. of Cal.* v. *Doe*, 519 U.S. 425, 429 (1997) (inquiry focuses on "the essential nature and effect of the proceeding" and the "nature of the entity created by state law") (internal quotation marks and citations omitted); *Mt. Healthy*, 429 U.S. at 280 (inquiry "depends, at least in part, upon the nature of the entity created by state law" and basing inquiry on extent of independent powers of entity to raise money and issue bonds). The "arm of the State" inquiry necessarily turns on the nature of the entity and extent of state control, rather than the extent to which an entity exercises powers delegated by the State, at least in part because all local governments exercise powers that, in theory, could be exercised by the State itself and are therefore delegated. See pp.21-22, *infra*.

The same principle—that States generally are entitled under the Constitution to sovereign immunity and political subdivisions are not—has been applied in admiralty contexts. Indeed, in the same Term that the Court held in *Ex parte New York* that constitutional principles of state sovereign immunity shield States from *in personam* liability in admiralty, the Court stated in an-

other admiralty case that "[t]he Port [of Seattle], being a municipal corporation under the laws of Washington * * * could have been sued in the federal court." *Port of Seattle* v. *Oregon & Washington R.R.*, 255 U.S. 56, 71 (1921) (citing, *inter alia*, *Lincoln County* v. *Luning*, *supra*). The Court explained that "although the State has also an interest" in the case, "suit against the [municipal] port would not be prevented by the Eleventh Amendment." *Ibid.*

Accordingly, basic principles of sovereign immunity protected by the Constitution compel the conclusion that, although the States and their arms enjoy immunity from *in personam* suits in admiralty, that "immunity does not extend to suits prosecuted against a municipal corporation or other governmental entity which is not an arm of the State." *Alden*, 527 U.S. at 756.

B. In *Workman* v. *City of New York*, This Court Held That Municipalities Do Not Enjoy Any Specialized Form Of Immunity From *In Personam* Suits In Admiralty

1. a. More than a century ago, in *Workman* v. *New York City*, 179 U.S. 552 (1900), this Court held that admiralty law recognizes no extra-constitutional principle of immunity for political subdivisions. In *Workman*, a fire-boat owned by the City of New York collided with another vessel in attempting to extinguish a fire in a warehouse. Applying state law, the court of appeals held that, because "the city, in the operation of the fire-boat, performed a governmental, and not a corporate, function," the city was not liable in admiralty for its actions. See *id.* at 557. In the view of the court of appeals, actions taken "for the general good of the public as individual citizens * * * are governmental" (and hence within the realm of immunity), while actions that "pri-

marily and legitimately devolve upon the municipality itself" are not governmental (and hence may be the subject of suit). *Id.* at 556.

This Court reversed. The Court explained that the case presented two questions: "first, whether * * * the law of the city of New York or the maritime law should control; and, second, if the case is solely governed by the maritime law, whether the city of New York is liable." 179 U.S. at 557. With respect to the first question, the Court explained that, if state law were permitted to control, maritime law "would be necessarily one thing in one state and one in another; one thing in one port of the United States and a different thing in some other port;" and "one thing to-day and another thing to-morrow." *Id.* at 558; see *id.* at 559-563. Because that would lead to "[t]he practical destruction of a uniform maritime law," *id.* at 558, the Court held that the question whether the city could be held liable was governed by uniform federal admiralty law, not by state law. Cf. *American Dredging Co.* v. *Miller*, 510 U.S. 443, 447, 450-454 (1994).[7]

The Court then turned to the question whether, "under maritime law, the city of New York was liable for the injury inflicted by the fire-boat." 179 U.S. at 563-564. The Court explained that "there is no limitation

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[7] As the *Workman* Court recognized, the English courts had reached the same conclusion:

> "It would be a strange distinction to persons coming with their ships to different ports of this country, that in some ports, if they sustain damage by the negligence of those who have the management of the docks, they will be entitled to compensation, and in others they will not."

179 U.S. at 560 (quoting *Mersey Docks & Harbour Bd., Tr.* v. *Gibbs*, (1866) L.R. 1 H.L. 122).

taking [municipal] corporations out of the reach of the process of a court of admiralty." *Id.* at 565. To the contrary, such political subdivisions "are amenable to judicial process" and "admiralty * * * courts, within the limit of their jurisdiction, may reach persons having a general capacity to stand in judgment." *Ibid.* Having found that the city "was * * * subject to the process of a court of admiralty," *id.* at 566, the Court held that "in the maritime law, the public nature of the service upon which a vessel is engaged at the time of the commission of a maritime tort affords no immunity from liability in a court of admiralty," *id.* at 570. The Court therefore concluded that the city's immunity defense "was without foundation in the maritime law." *Ibid.*

Even the dissenters in *Workman* did not advance a theory of general municipal liability from *in personam* suits in admiralty comparable to the one adopted by the court of appeals below. Rather, they took the much narrower position that a city should not be subjected to tort liability for firefighting and similar emergency activities. See 179 U.S. at 577-581. They distinguished cases, more analogous to this one, allowing suits against a municipality "for injuries from a defect in a highway which the city is bound by its charter to repair," *id.* at 575, or for cases involving "injuries caused to vessels by not keeping open a draw in a bridge," *id.* at 589.[8]

b. The holding of *Workman* that "*the theory of sovereign attribute* * * * does not control the maritime law,

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[8] Drawbridge accidents were not uncommon by the time of *Workman*, and admiralty courts had recognized the *in personam* liability of municipalities for negligence in the operation of drawbridges. See, *e.g.*, *Greenwood* v. *Town of Westport*, 60 F. 560 (D. Conn. 1894); *Hill* v. *Board of Chosen Freeholders of Essex County*, 45 F. 260 (D. N.J. 1891); *City of Boston* v. *Crowley*, 38 F. 202 (D. Mass. 1889).

and cannot justify an admiralty court in refusing to redress a wrong where it has jurisdiction to do so," 179 U.S. at 572, has been recognized by the lower courts from the time that *Workman* was decided.[9] Likewise, the treatise writers uniformly acknowledge that holding. As the 1940 edition of *Benedict on Admiralty* explained, "[a] municipal corporation, unlike a sovereign, is subject to the jurisdiction of a court of admiralty and neither the public nature of the service upon which a municipal vessel is engaged at the time of the commission of a maritime tort nor a local rule of law rendering the city nonliable in the State courts on the theory that the city was exercising not merely a corporate but a governmental

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[9] See, *e.g.*, *City of Chicago* v. *White Transp. Co.*, 243 F. 358, 359 (7th Cir.) ("[A] municipal corporation is liable for any negligent act, committed on navigable waters, which would render any private corporation or any individual liable"), cert. denied, 245 U.S. 660 (1917); *Maryland* v. *Miller*, 194 F. 775, 784 (4th Cir. 1911) (holding city liable for maritime tort and stating that "even the nonliability of a city by reason of the exercise of its governmental functions does not serve to relieve it from liability"); *Connone* v. *Transport Desgagnes, Inc.*, 976 F. Supp. 1111, 1112 (N.D. Ohio 1997) ("[U]nder federal maritime law, it is well established that a political subdivision of a state may not invoke sovereign immunity as a defense against maritime tort claims.") (citing cases); *Principe Compania Naviera, S.A.* v. *Board of Comm'rs*, 333 F. Supp. 353, 356 & n.10 (E.D. La. 1971) ("[W]here an admiralty court has jurisdiction over the parties and subject matter, sovereign immunity will not defeat an otherwise meritorious lawsuit brought against a state agency for its alleged torts"); *Kelley Island Lime & Transp. Co.* v. *City of Cleveland*, 47 F. Supp. 533, 540 (N.D. Ohio 1942) ("The liability of a municipality for a maritime tort * * * has been established in the courts for several decades."); *O'Keefe* v. *Staples Coal Co.*, 201 F. 131, 134 (D. Mass. 1910) (holding county subject to maritime liability for negligent operation of drawbridge and relying on *Workman* for the proposition that "because the city was amenable to the process of the admiralty court, * * * it was liable like any other defendant for a maritime tort").

function can bar a recovery in admiralty." 1 Erastus C. Benedict, *The Law of American Admiralty* § 216, at 481-482 (6th ed. 1940). Accord Grant Gilmore & Charles L. Black, *The Law of Admiralty* § 9-13, at 608 (2d ed. 1975) (*Workman* "held that the city could be sued *in personam*, under principles of maritime law which prevailed over local law by which the city was immune from suit"); 1 Steven F. Friedell, *Benedict on Admiralty* § 112, at 7-37 (7th ed. (revised) 1988) ("Nor can a state law deprive a party of redress in admiralty against a municipality for the negligence of its servants.").

In addition, this Court has considered several admiralty cases against political subdivisions since *Workman*, with no inkling that such entities are entitled to sovereign immunity. See, *e.g.*, *City of Milwaukee* v. *Cement Div., Nat'l Gypsum Co.*, 515 U.S. 189 (1995); *Jerome B. Grubart, Inc.* v. *Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995); *Morales* v. *City of Galveston*, 370 U.S. 165 (1962); *Jacob* v. *New York City*, 315 U.S. 752 (1942). And lower courts (outside the Fifth Circuit and the Eleventh Circuit here) have generally followed *Workman* and rejected claims by municipalities of immunity (whether based on federal or state law) in admiralty actions. See, *e.g.*, *Complaint of Great Lakes Dredge & Dock Co.*, No. 92 C 6754, 1996 WL 210081, at *2 (N.D. Ill. Apr. 26, 1996) (collecting cases).[10]

c. The Court in *Workman* acknowledged that, where a foreign sovereign itself or a vessel owned by a foreign

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[10] See also *Rodgers & Hagerty, Inc.* v. *City of New York*, 285 F. 362, 363-364 (2d Cir. 1922), cert. denied, 261 U.S. 621 (1923); *City of Chicago* v. *White Transp. Co.*, 243 F. at 358-359; *The Thielbek*, 241 F. 209, 214 (9th Cir.), cert. denied, 245 U.S. 661 (1917); *Pelican Marine Carriers, Inc.* v. *City of Tampa*, 791 F.Supp. 845, 856-858 (M.D. Fla. 1992), aff'd, 4 F.3d 999 (11th Cir. 1993) (Table).

sovereign had been sued in an admiralty court, the court had "declined to exercise jurisdiction." 179 U.S. at 566; see *id.* at 567-569 (citing English cases). The Court explained that "these rules, however, proceed upon the hypothesis of the want of a person or property before the court over whom jurisdiction can be exerted." *Id.* at 566. They "rest[], not upon the supposed want of power in courts of admiralty to redress a wrong committed by one over whom such courts have adequate jurisdiction, but alone on their inability to give redress in a case where jurisdiction over the person or property cannot be exerted." *Ibid.* Where, as in the case of political subdivisions, the admiralty court does have jurisdiction, "the maritime law affords no justification" for the contention that the subdivision in its "public or governmental" capacity "should be treated by the maritime law as a sovereign" and excused from liability. *Id.* at 566.

2. As noted above, twenty years after *Workman*, this Court held in *Ex parte New York* that States are entitled under the Constitution to sovereign immunity from *in personam* admiralty suits. That result, however, is entirely consistent with *Workman*. The *Ex parte New York* Court explained that *Workman* "was careful to distinguish between the immunity from jurisdiction attributable to a sovereign upon grounds of policy, and immunity from liability in a particular case." 256 U.S. at 499. The Court held that States were entitled to "immunity from jurisdiction" in admiralty (as in other) cases. See *id.* at 497 (noting that a State under the Constitution "may not be sued without its consent"). Neither the holding nor the rationale of *Ex parte New York*, however, did anything to disturb *Workman*'s holding that admiralty law does not recognize—for entities that *are* subject to the jurisdiction of an admiralty

court—an "immunity from liability in a particular case." The *Workman* and *Ex parte New York* decisions therefore complement one another and track the general rule outside of admiralty: while States (and arms of States) are entitled to sovereign immunity, lesser political entities are not.

3. The court of appeals in this case failed to recognize the crucial difference between the State, which is entitled under the settled principles discussed above to sovereign immunity, and its political subdivisions, which are not. The court of appeals noted that its predecessor court in *Broward County* v. *Wickman*, 195 F.2d 614 (5th Cir. 1952), had, instead of following *Workman*, "dr[awn] a parallel to" *Ex parte New York*. No such parallel, however, would be valid. *Ex parte New York* stands for the proposition that, absent consent, a *State* has immunity from an *in personam* suit in admiralty. Nothing in *Ex parte New York* suggests that the immunity it recognized would extend beyond the State or an arm of the State, and *Ex parte New York* has never been cited for that principle by this Court. The court of appeals therefore was mistaken in holding that the correct "parallel" (Pet. App. 4a) in a case involving a political subdivision is to *Ex parte New York*, rather than to this Court's decision squarely rejecting immunity for such political subdivisions in *Workman*.[11]

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[11] The court of appeals' error in fact dates back to the Fifth Circuit's decision in *Broward County* v. *Wickman*, *supra*. In that case, a yacht owner sued a Florida county for damages incurred when it struck an abutment of a drawbridge. The court noted that a Florida Supreme Court decision had held that a Florida county "partakes of the immunity of the state, and may not be sued at law in an action *ex delicto* by one who has sustained damage because the county permitted a bridge to become unsafe." 195 F.2d at 615. The Florida Supreme

Furthermore, the court of appeals' alternative rule grounding immunity on whether a municipality is "exercising power delegated from the state," Pet. App. 5a, is not only directly at odds with the reasoning of *Workman*, see 179 U.S. at 570 (rejecting immunity rule based on "public nature of the service" in which municipality was engaged), but also would lead to indeterminate and arbitrary results. To begin with, because *all* power exercised by political subdivisions is in a broad sense "a slice of state power," *Lake Country Estates*, 440 U.S. at 401; see *Lincoln County* v. *Luning*, 133 U.S. at 530 (a political subdivision necessarily exercises only "such powers as are given to it by the state"), the court of appeals' test may not be capable of meaningful application.

Moreover, to the extent that the test is able to draw meaningful distinctions among maritime activities engaged in by municipalities, it reduces the threshold jurisdictional inquiry as to whether a municipal defendant is amenable to suit to a case-by-case determination of what powers allegedly were exercised by the municipality with respect to the particular events giving rise to suit. Unlike the "arm of the State" inquiry, which focuses on the nature of the entity and therefore will not vary from case to case (see pp. 12-13, *supra*), this inquiry would focus on the specific activities involved in a

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Court's holding, however, should have been of no consequence, because this Court's decision in *Workman* expressly rejected the proposition that the immunity of a political subdivision in an admiralty case depends on state law, and that basic rule of admiralty law is equally binding in state court. See note 3, *supra*. The court of appeals in *Wickman* was accordingly mistaken in concluding that "a state *and its political subdivisions* are immune from process in actions of this character." *Ibid.* (emphasis added).

given case, and would have to be relitigated anew in each case. The inquiry, though presumably resolving an issue of federal law, would not only be fact-specific, but would turn largely on questions of state law (including a comparative analysis of which maritime functions are typically delegated to local entities). Such a case-by-case inquiry could only foster uncertainty, and the litigation that accompanies uncertainty, about when municipalities are answerable in admiralty court. See *Grupo Dataflux* v. *Atlas Global Group, LP*, 124 S. Ct. 1920, 1930 (2004) ("[u]ncertainty regarding the question of jurisdiction is particularly undesirable"); *Great Lakes Dredge & Dock Co.*, 513 U.S. at 547 (jurisdictional rules should not depend on case-specific inquiries that "would be hard to apply, jettison[] relative predictability for the open-ended rough-and-tumble of factors," and invit[e] complex argument in a trial court and a virtually inevitable appeal.").[12]

C. The *Workman* Rule Complements This Court's Sovereign Immunity Precedents And Promotes Important Interests Of Admiralty Law

There have been no developments in the law that have undercut *Workman*'s "doctrinal underpinnings." *Dickerson* v. *United States*, 530 U.S. 428, 443 (2000). To the contrary, the holding in *Workman* that political subdivisions do not partake of the State's sovereign immu-

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[12] Another problem with the court of appeals' rule is that States at times delegate functions not merely to political subdivisions but to private actors as well. See, *e.g.*, *Richardson* v. *McKnight*, 521 U.S. 399 (1997) (prisons); *The Rock Island Bridge*, 73 U.S. (6 Wall.) 213 (1867) (private bridge over navigable water). The court of appeals' rule could lead to claims of immunity by such private actors, a result that is at odds with traditional principles of sovereign immunity.

nity dovetails with settled immunity principles repeatedly recognized by this Court outside of admiralty. See *Alden* v. *Maine*, 527 U.S. at 756; Part A, *supra*. Furthermore, the settled distinction that the constitutional framework and this Court's decisions draw between the States and their political subdivisions for purposes of sovereign immunity preserves the State's sovereign immunity for any functions that a State determines to perform itself, while at the same time precluding States from leveraging their immunity to shield other entities from suit. The distinction therefore has been consistently and recently recognized and reaffirmed by the Court. See pp. 11-13, *supra*.

Moreover, recognizing a new municipal immunity from admiralty suits at this late date not only would require overruling *Workman* and sharply deviating from the established framework for sovereign immunity, but would be inconsistent with central principles of admiralty law. An important objective of admiralty law has long been to compensate the victims of wrong, and the Court in *Workman* relied in part on that objective to support its result. See *Workman*, 179 U.S. at 563 (noting "imperative command" of admiralty courts to "administer redress for every maritime wrong in every case where they have jurisdictional power over the person by whom the wrong has been committed"); see also *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375, 386-387 n.5 (1970) (permitting wrongful death recoveries under general maritime law); *The Max Morris*, 137 U.S. 1, 14 (1890) (rejecting contributory negligence as absolute bar to recovery in admiralty cases); *The Sea Gull*, 21 F. Cas. 909, 910 (C.C.D. Md. 1865) (No. 12, 578) (Chase, J.) ("[C]ertainly it better becomes the humane and liberal character of proceedings in admiralty to give

than to withhold the remedy."). Holding that municipalities are immune from *in personam* suits in admiralty would bar recovery to the victims of maritime torts involving the operation of bridges, the maintenance of ports, piers, or wharves, and a host of other maritime activities engaged in by municipalities.

Another fundamental objective of admiralty law is uniformity. See *Great Lakes Dredge & Dock Co.*, 513 U.S. at 546 n.6 (one of the justifications for admiralty jurisdiction is promoting "uniformity of substantive law"); *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1874) ("One thing * * * is unquestionable; the Constitution must have referred to a system of [admiralty] law coextensive with, and operating uniformly in, the whole country."); Frankfurter & Landis, *supra*, at 7 ("The need for a body of [admiralty] law applicable throughout the nation was recognized by every shade of opinion in the constitutional convention."). Adopting a legal regime that permitted a vessel's right of redress for injuries to vary from one port to the next would threaten that important interest. This Court in *Workman* recognized the haphazard and potentially disruptive legal regime that would exist if a vessel's ability to recover for injuries "instead of being general and ever abiding, would be purely local—would be one thing to-day and another thing to-morrow" as the vessel traveled from port to port. 179 U.S. at 558. In *Workman*, this Court spared maritime law from such a haphazard and potentially disruptive legal regime by following the general rule that municipalities are not immune from suit. There is no reason for the Court to reverse course here.

D. Holding That Political Subdivisions Are Entitled To Immunity From *In Personam* Suits In Admiralty Could Disrupt Important Federal Interests

In several different respects, a rule that political subdivisions are immune from *in personam* admiralty actions could disrupt significant federal interests.

1. Nationwide there are thousands of bridges over navigable waters. Pursuant to Act of Congress (see 33 U.S.C. 401, 491), the U.S. Coast Guard exercises jurisdiction over all such bridges, including their location and clearance, construction, lighting and safety, and maintenance, and the use and operation of drawbridges in particular. See 33 C.F.R. Pts. 114-118. The existing federal regulatory regime, however, rests in part on the understanding based on *Workman* and its acceptance for more than a century that political subdivisions remain subject to the incentives for safe operation provided by admiralty tort principles. If such entities, contrary to the longstanding background principle, could assert immunity from *in personam* suits for maritime torts, that would unsettle the baseline for federal regulation and could require more intensive federal regulation of bridges and the imposition of additional expenses on both the federal government in terms of dollars and on local governments in terms of lost autonomy.

2. A holding that political subdivisions enjoy immunity from suit in admiralty also could invite challenges to the jurisdiction of the FMC to adjudicate privately filed complaints against such entities. Pursuant to the Shipping Act, the FMC regulates, *inter alia*, entities—called marine terminal operators, or MTOs—engaged "in the business of furnishing wharfage, warehouse, or other terminal facilities in connection with a common carrier." 46 U.S.C. App. 1702(14). The

FMC relies on privately filed complaints, among other enforcement tools at its disposal, to ensure that MTOs comply with the Shipping Act.[13]

MTOs are frequently operated by state or local government entities. In particular, there are at least 126 commercial ports in the United States that are affiliated with a state or local government instrumentality. See American Ass'n of Port Authorities, *Seaport Governance in the United States and Canada* (*available at* <http://www.aapa-ports.org/pdf/governance_uscan.PDF>). The FMC estimates that a significant percentage of such ports (as high as 70%) are operated by municipal or county authorities. And the FMC frequently adjudicates privately filed complaints against such authorities, including complaints alleging unreasonable discrimination by MTOs in awarding of terminal leases for facilities built and maintained by public entities.[14]

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[13] The FMC's regulation of MTOs includes the oversight of filed agreements, which involve the fixing or discussing of rates and which are immune from antitrust prosecution, see 46 U.S.C. App. 1703(b); the oversight of the publication of rates, regulations, and practices, see 46 U.S.C. App. 1707(f); and oversight of regulated conduct to ensure that MTOs do not engage in prohibited acts, including prohibitions against unreasonable preferences, unreasonable discrimination, and unreasonable refusals to deal or negotiate, see 46 U.S.C. App. 1709(d).

[14] See, *e.g.*, *New Orleans Stevedoring Co.* v. *Board of Comm'rs*, 29 Shipping Reg. (P&F) 1066 (FMC June 28, 2002), aff'd, 80 Fed.Appx. 681 (D.C. Cir. 2003); *NPR, Inc.* v. *Board of Comm'rs*, 28 Shipping Reg. (P&F) 1512 (FMC Mar. 16, 2000); *Ryan-Walsh, Inc.* v. *Port of Houston Auth.*, 28 Shipping Reg. (P&F) 236 (FMC Mar. 30, 1998); *Southern Pac. Transp. Co.* v. *Port of Long Beach*, 27 Shipping Reg. (P&F) 690 (FMC Sept. 5, 1996); *James J. Flanagan Shipping Corp.* v. *Lake Charles Harbor & Terminal Dist.*, 27 Shipping Reg. (P&F) 923 (FMC July 30, 1997); *Seacon Terminals, Inc.* v. *The Port of Seattle*, 26 Shipping Reg. (P&F) 886 (FMC Apr. 14, 1993); *Independent Pier Co.* v. *Philadelphia Reg'l Port Auth.*, 25 Shipping Reg. (P&F) 1381 (FMC Feb. 20, 1991);

In *FMC* v. *South Carolina State Ports Authority*, this Court held that Eleventh Amendment sovereign immunity extends to an FMC adjudication in a privately filed complaint against an entity that is an "arm of the State." See 535 U.S. at 751 & n.6. The rule adopted by the court of appeals in this case could interfere with the FMC's regulatory duties if political subdivisions that did not qualify as "arms of the State" claimed immunity from the FMC's adjudicatory jurisdiction on the ground that political subdivisions, like the State itself in *South Carolina State Ports Authority*, are entitled to sovereign immunity in admiralty.

3. Finally, a rule that political subdivisions may be immune from suit in an *in personam* admiralty action could impact the flow of commerce along the Nation's navigable waters. As this Court observed in *Workman*, "[i]t cannot be doubted that the greater part, if not the whole, of the maritime commerce of the country is either initiated or terminated in ports where municipal corporations exist." 179 U.S. at 559. Granting immunity from admiralty suit to political subdivisions that construct, operate, or maintain ports, bridges, and other maritime

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Gulf Container Line, BV v. *Port of Houston Auth.*, 25 Shipping Reg. (P&F) 1454 (FMC May 3, 1991); *Chilean Nitrate Sales Corp.* v. *Port of San Diego*, 24 Shipping Reg. (P&F) 920 (FMC Apr. 29, 1988); *New Orleans S.S. Ass'n* v. *Plaquemines Port, Harbor & Terminal Dist.*, 28 F.M.C. 556 (1986), aff'd *sub nom. Plaquemines Port, Harbor & Terminal Dist.* v. *Federal Mar. Comm'n*, 838 F.2d 536, 539 (D.C. Cir. 1988); *Wilmington Stevedores, Inc.* v. *The Port of Wilmington*, 28 F.M.C. 24 (1985); *Transportacion Maritima Mexicana, S.A.* v. *Board of Comm'rs*, 25 F.M.C. 698 (1983); *Louis Dreyfus Corp.* v. *Plaquemines Port, Harbor & Terminal Dist.*, 25 F.M.C. 59 (1982); *Jacksonville Mar. Ass'n* v. *City of Jacksonville*, 27 F.M.C. 149 (1984); *West Gulf Mar. Ass'n* v. *City of Galveston*, 22 F.M.C. 101 (1980); *West Gulf Mar. Ass'n* v. *Port of Houston Auth.*, 22 F.M.C. 420 (1980).

facilities could lessen the confidence that vessel owners have in their ability to send their vessels and goods safely from one port to another, throughout the Nation. It is therefore important that the uniform body of maritime law—which was designed at least in part to promote the flow of maritime commerce, see *Great Lakes Dredge & Dock Co.*, 513 U.S. at 546 n.6—apply fully to municipalities and other subdivisions, as it does to other entities.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted.

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